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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: APR 21 2011

Office: NEBRASKA SERVICE CENTER

FILE: [redacted]
SRC 09 017 50780

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel asserts that the director failed to consider the nature of the citations of the petitioner's article and the reference letters. We will consider this evidence below. For the reasons discussed in this decision, we uphold the director's ultimate determination that the petitioner has not established her eligibility for the benefit sought. Beyond the decision of the director, we further find that the petitioner has not submitted sufficient evidence of her advanced degree.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The regulation at 8 C.F.R. § 204.5(3)(i) states that evidence of an advanced degree consists of an "official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree" or an official academic record for a U.S. baccalaureate or foreign equivalent degree plus five years of post-baccalaureate experience.

The petitioner claims to hold a medical degree from "China Medical" and a Master of Science degree in infection immunology from Peking Union Medical College on the Form ETA 750B. The petitioner did not submit her medical degree. She submitted an entirely English-language "PostGraduate Certificate for Master Degree" in internal medicine purportedly from Peking Union Medical College in China. The petitioner did not submit a transcript or a copy of the official Chinese language document. The English-language certificate, while bearing some type of seal, does not appear to be an official academic record. The petitioner also failed to submit an evaluation explaining the U.S. equivalence of this postgraduate certificate. As the petitioner has not submitted sufficient evidence of her education, we withdraw the director's finding that the petitioner has established that she is a member of the professions holding an advanced degree.

The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest. Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. We include the term "prospective" to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, immunology, and that the proposed benefits of her work, improved treatment of transplant patients, cancer patients and those with autoimmune diseases, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

At the time of filing, the petitioner was working in the laboratory of [redacted] at the Columbia University Medical Center. The petitioner submitted three requests from [redacted] to review manuscripts for *Human Immunology*, of which [redacted] We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted

articles. Requests to participate in the widespread peer review process, especially from the petitioner's own supervisor, are not evidence of the petitioner's influence in the field.

The petitioner submitted two published foreign language articles, one published article in *Immunity* and a pending article that was in press for *Human Immunology*. While the three published articles demonstrate that the petitioner had disseminated her work, at issue is the ultimate influence of this work in the field once disseminated.

The petitioner submitted evidence that other researchers have cited the article in *Immunity*. Specifically, the petitioner originally submitted three articles that cite the article in *Immunity*, two of which are review articles. As noted by counsel, one of the reviews designated the petitioner's article as being "of special interest." The article also designated some articles as having "outstanding interest."

In response to the director's request for additional evidence, the petitioner submitted evidence that her article in *Immunity* had actually garnered eight citations, all of which predate the filing of the petition and, thus, may be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). One of the citations is a self-citation by one of the petitioner's coauthors, which, while normal in the field, does not demonstrate the petitioner's influence beyond her coworkers. The petitioner has not documented a consistent record of publication and citation indicative of "specific prior achievements" that can establish the petitioner's ability to benefit the national interest. *See NYSDOT*, 22 I&N Dec. at 219, n.6 (using the plural "achievements").

Moreover, we cannot ignore the fact that the petitioner was one of several authors for the article in *Immunity*. We acknowledge that collaboration is routine in the sciences and the existence of coauthors does not, by itself, diminish the individual contributions of each coauthor. That said, in this case, it is clear that the authors are listed or order of their contributions to the research. Specifically, footnote four indicates that the first three authors contributed equally to the article. The petitioner is listed as the seventh of nine authors, the ninth author being the senior author to whom correspondence should be addressed. This information does not preclude a finding that the petitioner made a significant contribution to this project. Nevertheless, given the number of authors and information in footnote four, it is incumbent upon the petitioner to document her role on this particular project. The petitioner failed to submit letters from any of her coauthors of the article in *Immunity* that might resolve the nature of her role on this research.

The remaining evidence consists of letters. The petitioner submitted two letters from [redacted] In her first letter, [redacted] asserts that the petitioner has "very good training" and "a very strong research background in three very important areas: organ transplantation, autoimmune diseases and cancer." More specifically, [redacted] explains that the petitioner "has unique techniques in cloning suppressive T cells," a "challenging and technically difficult procedure." [redacted] affirms that "there are only a few scientists" in the United States who can perform these procedures. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for an alien employment certification. *NYSDOT*, 22 I&N Dec. at 221.

Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* As stated above, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

[redacted] explains the petitioner's work with the inhibitory receptor immunoglobulin-like transcript 3 (ILT3). The only mention of ILT3 in the petitioner's articles is in the article coauthored with [redacted] that, as of the date of filing, was unpublished. Thus, the petitioner had yet to disseminate this work. As such, the petitioner cannot demonstrate the influence of this work.

In her second letter, [redacted] asserts that the petitioner's "finding that Cbl and Cbl-b genes play an important role in autoimmunity has received considerable international attention." USCIS need not accept primarily conclusory assertions.[1] While this article, published in *Immunity*, had garnered some citations as of the date of filing, we reiterate that the record lacks letters from the coauthors explaining the nature of the petitioner's contribution to this work. Moreover, a single article does not constitute the type of specific prior achievements that could demonstrate the petitioner's ability to benefit the national interest.

[redacted] a professor at the Columbia University Medical Center and a coauthor of the petitioner's pending article, provides similar information to that contained in [redacted] letter. Specifically, he notes the petitioner's expertise in cloning suppressor T cells. We reiterate that special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* [redacted] also notes the petitioner's discovery "that Casitas B cell lymphoma (cb1) proteins played a key role in establishing the MHC-dependent CD 4 and CD8 T cell development programs and play a role in autoimmunity." We acknowledge that this work garnered a small number of citations, but reiterate that it is a single article and that no one with first hand knowledge of the petitioner's role on this project has explained her role on this project. Finally, [redacted] asserts that the petitioner "demonstrated the potential usefulness of soluble immunoglobulin-like transcript 3 (sILT3) for immunosuppressive treatment of patients with autoimmune diseases like multiple sclerosis." As discussed above, the petitioner had not yet disseminated this research in the field as of the date of filing. As such, we cannot gauge the influence of this work in the field.

[redacted] Associate Director of the Cellular Immunology Laboratory at Columbia University, asserts that the petitioner belongs to the "elite group" of researchers "who are of the caliber of principal investigators / lead researchers and who are capable of making remarkable individual contributions." [redacted] does not explain this conclusion in the absence of evidence that the petitioner has ever received a grant as a principal investigator or worked as a lead researcher on any project. [redacted] notes the petitioner's skill in cloning suppressor cells. We reiterate once again that special or unusual knowledge or training does not inherently meet the national interest threshold.

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[1] *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Id. [redacted] then notes the significant results of the petitioner's article in *Immunity*. As discussed above, this single article by itself cannot establish that the petitioner has the necessary record of specific prior achievements. Finally, while [redacted] notes that the petitioner's work on ILT3 has resulted in a collaboration with physicians at the Columbia University Medical Center, this work had not been published as of the date of filing and had yet to influence the field beyond Columbia University.

The petitioner also submitted letters from individuals who affirm their independence of the petitioner. All but one of these letters are from individuals in New York City. The petitioner did not submit the curriculum vitae of these individuals establishing their past affiliations. [redacted] at the New York Blood Center, asserts that the petitioner has orally presented her work at international conferences. The record contains no evidence to support this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). [redacted] discusses the implications of the studies on which the petitioner has worked. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to present some benefit if it is to receive funding and attention from the scientific community. [redacted] letter does not demonstrate that the petitioner has a past record of producing work that is influencing the field. Rather, any determination as to the petitioner's ability to benefit the national interest to a greater degree than an available U.S. worker with the same minimum qualifications would be premature.

[redacted] a senior research scientist at the [redacted] asserts that the petitioner's cloning technique "established [a] foundation upon which other scientists can precisely identify gene profiles and markers of suppressive T cells." [redacted] does not claim to be applying the petitioner's cloning technique or identify any independent researcher who is doing so.

[redacted], an assistant professor of medicine at Harvard Medical School, discusses the importance of cloning T cells and attests to the petitioner's skill in this area. Even if the petitioner's cloning skills are unique, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

[redacted] an associate professor at the [redacted] discusses the importance of the petitioner's work with suppressor T cells and concludes that her "results may have crucial clinical implications not only for achieving tolerance in organ transplantation, but also for generating efficient immunogenic vaccines for immunotherapy in cancer and chronic viral diseases." [redacted] does not, however, explain how the petitioner is already influencing the field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction

of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The letters considered above primarily contain bare assertions of unique skills without providing specific examples of how those innovations have influenced the field, such as examples of independent laboratories applying the petitioner's cloning methods. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.[2] The petitioner submitted only a single letter from outside New York City and this letter does not suggest the author has applied the beneficiary's work. The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Ultimately, as of the date of filing, the petitioner had authored a single article that had garnered a small number of citations. The record does not establish the nature of the petitioner's role in this research. Regardless, a single article with a small number of citations does not demonstrate the petitioner's past record with some degree of influence in the field. The petitioner's skill in cloning suppressor T cells would appear to be a valid requirement for an employer to set forth on an application for an alien employment certification. *NYSDOT*, 22 I&N Dec. at 220-21. Unique skills do not warrant a waiver of that process in the national interest. *Id.*

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than

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[2] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.